

Ken Ward

Subject: FW: WVU Inquiry re: Greenbrier
Attachments: AO 1994-30.pdf; ATT00001.htm; AO 1994-22.pdf; ATT00002.htm; AO 1994-08.pdf; ATT00003.htm

From: "Knopp, Derek A" <Derek.A.Knopp@wv.gov>
To: "Mark Imbrogno" <mark.imbrogno@mail.wvu.edu>
Subject: RE: WVU Inquiry re: Greenbrier

Mark,

The Ethics Act prohibits a public official from having more than a limited interest in the profits or benefits of a public contract over which he or she "may have direct authority to enter into, or over which he or she may have control . . ." W. Va. Code § 6B-2-5(d). In Contract Exemption 2017-04, the Ethics Commission held that the Governor had sufficient control over public contracts of the West Virginia Development Office ("WVDO") because "the Governor is the chief executive officer of the State of West Virginia and directly appoints the executive director of the WVDO who serves at the will and pleasure of the Governor. W. Va. Const. Art. 7 § 5; W. Va. Code § 5B-2-2(a). Furthermore, the Cabinet Secretary of the Department of Commerce, the Department under which the WVDO is organized, is appointed by and serves at the will and pleasure of the Governor. W. Va. Code § 5B-1-1."

Here, the WVU Board of Governors consists of seventeen members. W. Va. Code § 18B-2A-1(c)(2). The Board is made up of a full-time faculty member, a student body member, an institutional classified employee member, and twelve members appointed by the Governor. *Id.* at (c)(3) and (5). The WVU Board of Governors also includes a full-time faculty member representing either extension services or health sciences and the chairperson of the Board of Visitors of West Virginia University Institute of Technology. *Id.* at (c)(5). The board members do not, however, serve at the will and pleasure of the Governor, but rather can only be removed for "for official misconduct, incompetence, neglect of duty or gross immorality." W. Va. Code § 18B-2A-1(e)(3). In addition, the Ethics Commission has held that appointment power alone is not enough to create direct authority or control over a public contract. Advisory Opinion 94-30; Advisory Opinion 94-22; Advisory Opinion 94-08. Therefore, because it appears the only authority Governor Justice has over the Board is the power to appoint, it is staff's opinion that the Governor does not have the requisite authority or control over the Board's contracts pursuant to W. Va. Code § 6B-2-5(d).

Finally, as your question has not yet been addressed by the Commission in a formal Advisory Opinion, the foregoing represents only staff's informal opinion.

Please contact me if you have further questions or concerns.

The staff advice rendered herein is based upon the facts provided. If all material facts have not been provided, or if new facts arise, you should contact the Ethics Commission for further advice as it may alter the analysis and render this advice invalid. This opinion is limited to the analysis of whether the Ethics Act would be violated by your proposed conduct. The Commission is without authority to determine whether other laws or rules prohibit or otherwise restrict your proposed conduct.

Sincerely,

Derek Knopp
Staff Attorney
West Virginia Ethics Commission
210 Brooks St., Suite 300
Charleston, WV 25301
304-558-0664 phone
304-558-2169 fax

This electronic message transmission contains information from the West Virginia Ethics Commission that may be confidential or privileged. The information is intended for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this electronic transmission in error, please notify us by telephone at (304) 558-0664 immediately.

From: Mark Imbrogno [<mailto:mark.imbrogno@mail.wvu.edu>]
Sent: Monday, September 11, 2017 2:36 PM
To: Knopp, Derek A <Derek.A.Knopp@wv.gov>
Subject: WVU Inquiry re: Greenbrier

Derek,
Nice talking with you again this afternoon. As I mentioned, here is the code cite regarding appointment of the WVU Board of Governors: 18B-2A-1(e)(3). This limitation on the governor's authority over board members appears to be significant enough that it removes the governor from having any direct authority to enter into a contract or have control over a contract between WVU and the Greenbrier. As well, below is my contact information.

Thanks again,
Mark

/ Mark A. Imbrogno
Senior Associate General Counsel
West Virginia University
Office of the Vice President for Legal, Government and Entrepreneurial Engagement
105 Stewart Hall – PO Box 6204
Morgantown, WV 26506-6204
(304) 293-1928 office
(304) 293-5752 fax
mark.imbrogno@mail.wvu.edu

CONFIDENTIALITY NOTE: This e-mail message is from the Office of General Counsel for West Virginia University and is for the sole use of the intended recipient or recipients and may contain confidential and privileged information. Any unauthorized review, use, disclosure, distribution, or other dissemination of this e-mail message and/or the information contained herein is strictly prohibited. If you are not the intended recipient of this e-mail message, please contact the sender by reply e-mail and destroy all copies of the original message.